

RECEIVED

FILE

DEC - 1 1992

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of  
  
Implementation of the  
Cable Television Consumer  
Protection and Compensation  
Act of 1992  
  
Cable Home Wiring

MM Docket No. 92 - 260

ORIGINAL

COMMENTS OF THE  
SECRETARY OF DEFENSE

The Secretary of Defense (the "Secretary"), through duly authorized counsel, pursuant to Section 201 of the Federal Property and Administrative Services Act of 1949, 40 USC Section 481, and the Memorandum of Understanding between the Department of Defense and the General Services Administration dated November 27, 1950, hereby files these comments in response to the captioned Notice of Proposed Rulemaking (NPRM).

As noted in paragraph 2 of the NPRM, Section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act") requires that the Commission "prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber". In paragraph 3 of the NPRM, the Commission requests "comment on whether the rules would need to be tailored to different settings (e.g. educational campuses, military facilities, and hospitals)." These comments respond to the Commission's "military facilities" question.

No. of Copies rec'd 0 + 4  
List A B C D E 5

PROVISION OF CABLE TELEVISION SERVICE TO  
DEPARTMENT OF DEFENSE INSTALLATIONS

The military services probably have as many existing different arrangements for the provision of cable television to the service-owned base housing and other "inside the gates" users as there are Army, Navy, Air Force and Marine Corps forts, bases and stations. Each such installation enters into a unique, locally negotiated contract for the provision of cable television service. The local commander in effect has acted as a type of franchising authority for his/her own installation. In some instances, cable television service is provided by the locally franchised provider under the same terms and conditions as service provided the public at large.<sup>1</sup> In other instances, a provider other than the local cable company is utilized.<sup>2</sup> It is important to note that in many instances, issues being considered in this proceeding have been taken into account in those contracts. Whether the cable company is required to remove the cable inside wiring at the termination of the contract or whether it has agreed to sell it to the installation at a pre-determined price are matters often resolved in these contracts. So, as an initial matter, those existing contracts should be grandfathered and the Commission's rules should apply prospectively only.

As to those prospective rules, the Secretary believes that the

---

<sup>1</sup>Ft. McNair, in Washington, D.C., takes service from the District of Columbia franchisee under the same terms and conditions as any resident of the city for reasons considered advantageous by the Fort.

<sup>2</sup>Ft. Meyer is located in Arlington County, Virginia. The Fort, an area of exclusive federal jurisdiction, does not utilize the Arlington County franchised system. Rather, cable television service is provided by a company selected through competitive bidding.

authority to "remove, replace, rearrange, or maintain"<sup>3</sup> cable inside wiring should be granted by the Commission and must rest with the owner of the property. As a practical matter, the military services would contract for any of those services desired, and could not permit the resident service member to perform those tasks lest construction standards be violated. As the entity most familiar with the installation, the existing cable operator would be in a good position to bid on those services, either as a separate contract or as part of the initial service contract with the installation. The Secretary therefore suggests that military installations be permitted those incidents of ownership suggested by Congress.

As to ownership itself, the Secretary notes that the legislative history contained in the Senate Report states that "...the FCC should extend its policy to permit ownership of the cable wiring by the homeowner (upon termination of service)".<sup>4</sup> This does not suggest that ownership should shift automatically to the homeowner, only that the owner should have the right to acquire ownership. An automatic shifting of ownership could give rise to a Fifth Amendment "taking" problem on a military installation.<sup>5</sup> The Secretary therefore believes that any transfer of ownership should be the subject of an agreement between the installation commander and the cable franchisee. It is unlikely that a "piecemeal" transfer on a military installation would take place the

---

<sup>3</sup>Senate Report No. 102-92, page 23.

<sup>4</sup>Senate Report No. 102-92, page 23.

<sup>5</sup>"...nor shall private property be taken for public use without just compensation." Constitution, Amendment V.

first time each quarters changed residents. Any transfer, if one were deemed necessary, would be a transfer of all inside cable wiring done at one time. To respond to the ownership interests expressed in the legislative history, the Commission's rules should provide that cable operators must negotiate in good faith on a transfer of ownership with this being a required clause of any franchise or contract. Should the franchisee thereafter not negotiate in good faith, then the installation should have the options of either exercising a right to take the cable or requiring the franchisee to remove it and restore the premises to their original condition. Both of these options would be included in the original franchise or contract.

THE MILITARY SERVICES CURRENTLY  
OWN SOME CABLE INSIDE WIRING

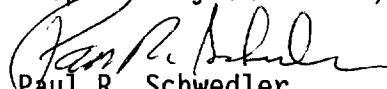
Section 16(d) of the Act requires the Commission to "prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by a cable operator within the premises of such subscriber". In the construction of new military housing, it is becoming the norm that the general contractor is required to provide both telephone inside wiring and cable inside wiring. Other cable may have transferred ownership by virtue of a contract of another sort. Thus, the military services already own at least some cable inside wiring, some of which may have been installed by the local cable television company acting as a subcontractor. Such cable could be incorrectly construed to be subject to the terms of the Act. There may be other situations where ownership clearly vests in a party other than


the cable television company.<sup>6</sup> In those situations, the disconnection of cable television service should not of course result in a change of ownership or any "disposition" of such cable. The Commission should define what cable is or should be covered under its rules, recognizing that not all cable is owned now by the cable operator who may have installed it.

#### CONCLUSION

The Secretary of Defense urges the Commission to grandfather existing contracts, to grant military installations the incidents of ownership suggested in the legislative history, and to require a "good faith" negotiating clause regarding transfer of ownership following termination of service, with appropriate contractual sanctions for non-compliance. Further, the Commission's rules should recognize that not all cable inside wiring is owned by the cable operator who installed it and that such cable should therefore not be subject to the rules.

Respectfully submitted,

  
Paul R. Schwedler  
Assistant Chief Regulatory  
Counsel  
(703) 692-8457

  
Carl Wayne Smith  
Chief Regulatory Counsel,  
Telecommunications, DOD  
Code AR  
Defense Information Systems  
Agency  
701 S. Courthouse Road  
Arlington, Virginia 22204

---

<sup>6</sup>Such as a transfer of ownership as a result of actions following a termination of service.